took effect. By section 199(1) the provisions of section 131 shall apply to surrendered land. My view is that the provisions are intended to apply to the State Authority and not to the holder of the land as against any person claiming title or interest in the land. I am also inclined to think that in whatever clothing a title of land may be, if it is identifiable to be the land affected by a claim to title or interest, then a caveat can be entered. The surrender to the State Authority, in the circumstances of this case, was merely for the purpose of sub-division and the issue of separate titles for the sub-divided portions of the land to enable the owner to dispose of them separately. Title numbers are merely brands given to the land. They do not change the material i.e. the land. They do not affect a claimant's rights.

I come to the most significant point that has been raised. It is shown by the applicant that when the land was held under certificate of title, the respondent caveated it on June 15, 1976; on June 30, 1976 at the instance of the applicant, the Collector issued a notice in Form 19C of intended removal of the caveat at the expiry of a month from service of the notice. The respondent did nothing and the Collector after the expiry of a month removed the caveat.

In dealing with this point, I need only advert to the judgment of Syed Agil Barakbah J. in *Damodaran v. Vasudeva*[1] where at page 129 he discussed several authorities. He referred to *K.I. Muhiuddeen Rawther v. K.E.P. Abdul Kassim*[2] where Ong J. (as he then was) said that the extinction of a caveat is final and irrevocable. It seems to be established law that the court has no power to remove, renew or extend a caveat after its lapse. I should add if it is based on the same claim. Under section 326(2) of the National Land Code the power to extend the life of the caveat lies with the court. The respondent ignored the Collector's notice to remove the caveat. She did not apply to the court for extension. Applying the above principle, the removal by the Collector has the effect of extinguishing the caveat. In my view, the action of the respondent in lodging another caveat, based on the same claim after the Collector had removed the first caveat and without seeking the court's order, was tantamount not only to spurning the Collector's act done according to law, but also to usurping the powers of the court. Considering this act of the respondent and then her non-disclosure to the court that the first caveat had been removed, I do not think she has any ground, equitable or legal, to maintain the caveat. Further, the land, by reason of her own act in having transferred it, has lost its original user, as it is being developed into a housing estate. The applicant must have expended substantial sums for the development. Regard must be had to this and to public interest as well. But in spite of all this, I would not say that the respondent is without remedy. If she could establish her claim, damages should be appropriate remedy in the circumstances of the case.

I hereby order that the caveat be removed. Costs to the applicant.

Order accordingly.

Solicitors: *Suppiah & Singh; Subra Naicker & Co.*

PUBLIC PROSECUTOR v. OH KENG SENG

[O.C.J. (Ajaib Singh J.) October 18, 1978]
[Seremban — Criminal Trial No. 2 of 1976]

Sedition — Freedom of speech — Limitations imposed by law — Intention of accused irrelevant — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

Criminal Law & Procedure — Charge of sedition — Charge lacking in particulars — Charge did not specify particular category of seditious tendency — Sedition Act, 1948 (Revised 1969), ss. 3(1) & 4(1)(b).

The accused in this case was charged as follows:—

"That you on the 23rd day of June, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act, 1948 (Revised 1969), and punishable under section 4(1) of the said Act."

The trial judge found the said charge defective and highly prejudicial to the accused as it did not specify the particular category of seditious tendency as defined in section 3(1) of the Sedition Act, 1948.

The trial court amended the charge to read as follows: "That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) that is to say, words having a seditious tendency as defined in section 3(1)(a) and 3(1)(e) of the Sedition Act 1948 (Revised 1969) namely, to bring into hatred, contempt and to excite disaffection against the Government and to promote feelings of ill-will and hostility between different races of the population, and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

The accused did not seriously deny that he had made the speech which was the subject-matter of the charge. He contended, however, that his speech was a fair criticism of government policies, that he had no intention of causing any racial trouble and that he never advocated to the people that they should take the law into their own hands.

Held: (1) *bona fide* and fair criticism of government policies and of opposition political parties is not within the mischief of the Sedition Act so long as the speaker does not exceed the bounds allowed to him under the law;

(2) the intention of the accused when he made the speech and used words which are alleged to be seditious is not material or relevant for it is provided in section 3(3) of the Sedition Act that the intention of the speaker shall be deemed to be irrelevant if in fact the words have a seditious tendency;

(3) to establish its case against the accused the prosecution is not obliged to prove that anything said in his speech was true or false or that it caused any disturbance or a breach of the peace;

(4) the accused in this case had not succeeded in establishing even on a balance of probabilities that the speech delivered by the accused came within any of the permissible limits as set out in section (2) of the Sedition Act.

Case referred to:-

(1) *Yoh Meng Heng* v. *Public Prosecutor* [1970] 1 M.L.J. 14.

CRIMINAL TRIAL.

Razalli bin Hassan (Deputy Public Prosecutor) for the prosecution.

Yeap Ghim Guan (*John Fernandez* with him) for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused was charged as follows: —

"That you on the 23rd day of June, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

At the close of the case for the prosecution on September 7, 1976 I acquitted and discharged the accused without calling for the defence as I held that the speech delivered by the accused on June 23, 1972 in Tampin was not seditious within the meaning of that term in the Sedition Act, 1948. The Public Prosecutor appealed and on June 22, 1977 the Federal Court set aside the order of acquittal and directed that the accused be called upon to make his defence (see [1977] 2 M.L.J. 206).

The accused has now given evidence on oath and has called one witness. In his evidence the accused did not seriously deny that he had made the speech which is the subject-matter of the charge. He said that his speech was a fair criticism of government policies, that he had no intention of causing any racial trouble and that he never advocated to the people that they should take the law into their own hands. The evidence of his witness Tai Kim Lean, who was also a prosecution witness in this case, was that he was contacted by the police only a few months before he gave evidence at the preliminary inquiry in the lower court and long after the accused made his speech in Tampin on June 23, 1972. He could not remember the exact date when he gave his statement to the police nor the date when he gave his evidence at the inquiry.

At the close of the defence case Mr. Yeap Ghim Guan for the accused submitted that the evidence of the accused and his witness had raised a reasonable doubt in the prosecution case and the accused should be given the benefit of doubt. He said that when the tape was re-played a day before the accused gave his evidence it was found that the voice recorded therein was incoherent. There was also no proof that the voice recorded on the tape was that of the accused. Next it was submitted that the witness Tai Kim Lean was contacted by the police a long time after the speech was alleged to have been made and just a few months before the witness gave evidence at the preliminary enquiry. For this reason his evidence was suspect for he may not have been present at the rally. Also when this witness gave evidence earlier as a prosecution witness he had said that he left the public rally at about 8.15 p.m. but the police diary which was exhibited in this case by the prosecution showed that the accused commenced his speech at 8.40 p.m. It was submitted that the evidence of Tai Kim Lean should not be believed as he was an unreliable witness.

Mr. Yeap Ghim Guan also submitted that the charge against the accused was improper and defective because it did not contain particulars alleging under which category of seditious tendency the accused had contravened the Sedition Act, 1948. In support of his submission he cited the case of *Yoh Meng Heng* v. *Public Prosecutor*.[1] In that case the accused was charged under section 29(1) of the Internal Security Act, 1960 for having in his possession a subversive document and it was held that it is essential that a person accused of an offence should be given sufficient particulars to know just what the charge against him is so that he may rebut it. Mr. Yeap Ghim Guan submitted that in the present case the prosecution had failed to state the particular category of seditious tendency under which the accused is alleged to have uttered seditious words. The accused was thus prejudiced and embarrassed in making his defence and he should therefore be acquitted and discharged.

The learned Deputy Public Prosecutor submitted that the defence had raised no reasonable doubt in the prosecution case. The accused in fact did not deny the contents of the speech. As far as the witness Tai Kim Lean was concerned it was submitted that the police were entitled to contact witnesses at any time before the trial. There was nothing suspicious about it. As to the time mentioned by this witness the learned Deputy Public Prosecutor said that the witness had mentioned the approximate time and not the exact time. On the point raised by Mr. Yeap Ghim Guan that the charge was improper and defective it was submitted that the charge was quite in order and that the accused was in no way misled or embarrassed.

I have considered the submissions made on behalf of the defence and the prosecution and I agree with Mr. Yeap Ghim Guan that the charge is defective because of the lack of particulars in the charge alleging seditious tendency as defined in the Sedition Act, 1948. In the case of *Yoh Meng Heng, supra,* the appellant was charged with two counts. The second charge was for being in possession of a subversive document under section 29(1) of the Internal Security Act, 1960 as follows: —

"That you on April 18, 1969 at about 6.30 a.m. at an unnumbered hut at Bertam Estate, Kepala Batas, in the District of Butterworth, in the State of Penang, were found, without lawful excuse, to have in your possession a subversive document, to wit a document titled 'Is Malaya a Democratic Country? Is there Freedom of Assembly, Association, Speech, Publication, Strike, Demonstration etc.' and that you have thereby committed an offence punishable under section 29(1) of the Internal Security Act No. 12 of 1960."

Subversive document is defined in section 29(3) of the Act as any document having in part or in whole a tendency —

(a) to excite organised violence against person or property in the Federation; or

(b) to support, propagate or advocate any act prejudicial to the security of the Federation or the maintenance or restoration of public order therein or inciting to violence therein or counselling disobedience to the law thereof or to any lawful order therein; or

(c) to invite, request or demand support for or on account of any collection, subscription, contribution or donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security of the Federation or to the maintenance of public order therein, or who incite to violence therein or counsel disobedience to the law thereof or any lawful order therein.

In holding that the charge was embarrassing and prejudicial to the appellant Ong Hock Sim J. (as he then was) said —

"In my view, it is essential that a person accused of a charge should be given sufficient particulars to know just what the charge against him is, so that he may rebut it. It is embarrassing to the defence not to know just what he is alleged to have contravened. Is this document alleged to be one having a tendency to excite organised violence against person or property in the Federation? Is it to support, propagate or advocate any act prejudicial to the security of the Federation or the maintenance or restoration of public order therein or inciting to violence therein or counselling disobedience to the law thereof or to any lawful order therein; or to invite, request or demand support for or on account of any collection, subscription, contribution or donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security of the Federation or to the maintenance of public order therein, or who incite to violence therein or counsel disobedience to the law thereof or any lawful order therein?

x x x x

Ratanlal's Law of Crimes shows that specimen charges relating to sedition should set out particulars by reference to the particular words of the law defining what is a seditious tendency.

In this respect I consider the second charge was embarrassing to the appellant in not having specified in what manner they are alleged to be subversive and the appellant was thereby prejudiced in his defence."

In the present case before me the relevant sections relating to the charge against the accused are on somewhat similar lines as section 29 of the Internal Security Act, 1960. In section 2 of the Sedition Act, 1948 it is provided that "seditious" when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency, and that "words" includes any phrase, sentence or other consecutive number or combination of words, oral or written. Seditious tendency is defined in section 3(1) as a tendency —

"(a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

(b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

(d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State; or

(e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or

(f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution."

And section 3(2) states —

"Notwithstanding anything in sub-section (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency —

(a) to show that any Ruler has been misled or mistaken in any of his measures;

(b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

(c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) —

(i) to persuade the subjects of any Rulers or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill-will and enmity between different races or classes of the population of the Federation,

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency."

The charge against the accused is that he uttered seditious words but it does not specify the particular category of seditious tendency as defined in section 3(1) which is alleged to have been violated by those words. The accused is therefore highly prejudiced and embarrassed in making his defence for he is not in a position to know exactly what he is required to rebut in defence. The charge is thus defective for want of essential and material particulars. I therefore rule that the charge as it stands cannot be sustained.

Mr. Yeap Ghim Guan has raised this point for the first time. No mention of it was made earlier in the trial before me nor did he cite the case of *Yoh Meng Heng* here or in the Federal Court. However in a criminal trial any point of law or procedure can be brought out at any stage of the proceedings and the court has to take cognisance of it. Now if I had been exercising an appellate jurisdiction I would have had no hesitation in dismissing the charge forthwith or at least in ordering a retrial. However, sitting at first instance I have to view this case in a different light. Neither the prosecution nor the defence has suggested any amendment to the charge. Nevertheless in the interest of justice it is the duty of the trial court in a criminal trial to look into the propriety of any charge that has been preferred against an accused person and if necessary to make appropriate amendments to it before the conclusion of the trial in order to bring the charge within the provisions of the particular section under which the charge is preferred by the prosecution. In ordering that the defence be called the Federal Court had held that the speech of the accused had a tendency to bring into hatred or contempt or to excite disaffection against the government and to promote feelings of ill-will and hostility between two ethnic groups — the Malays and the Chinese. So in accordance with this finding by the Federal Court I propose to amend the charge as follows: —

"That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached as Schedule 'A' to this charge) that is to say, words having a seditious tendency as defined in section 3(1)(a) and 3(1)(e) of the Sedition Act 1948 (Revised 1969) namely, to bring into hatred, contempt and to excite disaffection against the Government, and to promote feelings of ill-will and hostility between different races of the population, and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

(The amended charge was read over and explained to the accused. He claimed trial. Counsel for the

prosecution and defence did not wish to re-call any witness nor did they want to make further submissions. Thereupon his Lordship continued with his judgment).

I shall now deal with the points raised by Mr. Yeap Ghim Guan in his submission. The witness Tai Kim Lean was indeed interviewed by the police long after the public rally on June 23, 1972 but this fact cannot be held against the prosecution case in any way. In the course of police investigation into any crime witnesses may quite legitimately be interviewed and their statements recorded at any time before the conclusion of a trial. It might become necessary to interview prospective witnesses late in the day for various reasons such as the inability to trace a particular witness or as happened in this case to obtain additional confirmatory or corroborative evidence against the accused. The learned Deputy Public Prosecutor explained that the statement of Tai Kim Lean was recorded late because it was realised only at that stage that the prosecution had to provide corroboration by virtue of section 6(1) of the Sedition Act. As to the time when this witness left the rally Mr. Yeap Ghim Guan's assertion that he left the rally at about 8.15 p.m. is not quite accurate because later on when pressed during cross-examination to be more specific Tai Kim Lean said that he really did not know exactly what time he left because he did not have a watch with him. But he was quite certain that he left only after the accused had completed his speech. My impression of this witness was that he was telling the truth and although he could not remember some dates and times he was quite sure that he had attended the rally on June 23, 1972 and had heard the full speech of the accused.

Mr. Yeap Ghim Guan complained that when the tape was re-played the speech was incoherent. This is hardly surprising. It is well over six years now since the tape was recorded on June 23, 1972 and with the passage of such a long time the reproductive efficiency of an ordinary ninety-minute tape is likely to be diminished. That the voice on the tape was that of the accused was proved to the hilt. The prosecution evidence on this point which I accepted was that the speech of the accused was recorded on the tape and that the speech was afterwards transcribed and translated into English by competent translators. And when the investigating officer played back the tape in the accused's office on February 8, 1973 during police investigations the accused agreed that it was his voice and his speech.

I am satisfied that the prosecution has proved the first ingredient that the accused made the speech which is alleged to be seditious. The other ingredient which the prosecution has to prove in this case is that the accused uttered seditious words. In this connection it may not be out of place. I think, perhaps even necessary, to consider briefly the extent of the right to freedom of speech.

Freedom of speech is a fundamental right of citizens in a democratic country. No democracy worth its name can do without it for if it claims to cherish the ideals of a government by the people for the people it must allow free discussion on all matters pertaining to the political and social life of the people.

Freedom of speech however is not absolute.

For the good and orderly conduct and behaviour of the people, for the security of the country and for maintaining good relations with foreign countries it is essential that appropriate restrictions be placed on the right to freedom of speech. The Government will not permit any person being defamed or libelled in the name of freedom of speech. No government will tolerate abuses at itself or allow anyone to subvert it. It will not allow anyone to say or publish anything which may tend to raise feelings of hatred or contempt or disaffection against the government or which may tend to raise feelings of ill-will and hostility between different races in the country, or allow anyone to make such comments on the policies of a foreign country which might tend to sour its relationship with that country. Therefore it is quite in order and not inconsistent with the principles of democracy that appropriate restrictions be placed on the right to freedom of speech.

The Sedition Act of 1948 limits the right to freedom of speech and expression in our country. The constitutional validity of the Sedition Act cannot be challenged for in the same Article 10 of the Federal Constitution which provides for the right to freedom of speech and expression it is stated further that Parliament may by law impose such restrictions on these rights as it deems necessary or expedient in the interests of the security of the country, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation or incitement to any offence. The Sedition Act is thus designed to impose restrictions on the right to freedom of speech which Parliament has deemed necessary and expedient pursuant to and in accordance with Article 10 of the Federal Constitution.

Bona fide and fair criticism of government policies and of opposition political parties is not within the mischief of the Sedition Act so long as the speaker does not exceed the bounds allowed to him under the law. The question here is whether the speech delivered by the accused on June 23, 1972 is seditious within the ambit of the Sedition Act or whether it is a *bona fide* discourse on political and social matters and on the contemporary political situation. The intention of the accused when he made the speech and used words which are alleged to be seditious is not material or relevant for it is provided in section 3(3) of the Sedition Act that the intention of the speaker shall be deemed to be irrelevant if in fact the words have a seditious tendency. Therefore if the speech of the accused comes within the provisions of the Act as having a seditious tendency he commits the offence of uttering seditious words whether or not he intended his speech to have a seditious tendency. Also to establish its case against the accused the prosecution is not obliged to prove that anything said in his speech was true or false or that it caused any disturbance or a breach of the peace.

So it is in the light of these observations that the second ingredient has to be considered. The Federal Court has held that the prosecution had made out a *prima facie* case against the accused. The question

to be answered now is whether the evidence adduced by the defence has rebutted the prosecution case or has at least raised a reasonable doubt in the prosecution case. I have given due consideration to the evidence of the accused and that of his witness and I have come to the conclusion that the defence has in no way raised any reasonable doubt in the prosecution case. Nor do I think that the defence has succeeded in establishing even on a balance of probabilities (for here the onus lies on the defence) that the speech delivered by the accused came within any of the permissible limits as set out in section 3(2) of the Sedition Act. The evidence of the accused was to the effect that he merely criticised government policies and that he had no intention of causing any racial trouble. Intention of the speaker as the Sedition Act provides is irrelevant. Fair criticism of government policies is not unlawful and is not seditious *per se* but in criticising government policies or those of opposite political parties utmost care must be taken to ensure that the words uttered or published do not otherwise have a seditious tendency as defined in the Sedition Act. In this case the accused might well have meant to criticise government policies and opposition political parties but as the Federal Court has held his speech contained words which had seditious tendencies as defined in the Sedition Act. The defence having failed to rebut this finding or to raise any reasonable doubt in the prosecution case I have no alternative but to find the accused guilty and to convict him on the amended charge.

In mitigation of sentence it was urged by counsel for the defence that the court should take a lenient view on the ground that the accused was a first offender, that he was unemployed having lost his job as the manager of a finance company when he was charged in court and that the charge has been hanging over his head for a long time.

The offence of sedition in a multi-racial country like ours must be viewed with the seriousness which it deserves. The disastrous May 13 cannot be dismissed lightly or forgotten easily. It will take a long time before the events of that fateful day can be erased from the minds of the people. The efforts of the government and those of loyal and peace-loving people are geared towards the promotion of goodwill and harmony in the country and thus each and every individual living here irrespective of his racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. Any person found guilty and convicted of the offence of sedition even if he is a first offender will therefore find little sympathy from the court and he may well expect a stiff prison sentence as a punishment to him and as a deterrent to others.

In the present case however I do not propose to order a term of imprisonment. The accused has suffered long enough with the agony of having the charge hanging over his head for well over four years and this I think is a mitigating factor which I should take into account. This however must not be taken to mean that in any future case a person convicted of an offence under the Sedition Act will be only fined and not sent to prison just because of some delay in disposing of his case. In the present case the inordinate delay was caused by a number of factors for which the accused cannot wholly be blamed. He was arrested on February 26, 1974 over a year and eight months after he had delivered his speech. He was charged in the Sessions Court on March 1, 1974. On May 30, 1974 he applied under section 417 of the Criminal Procedure Code for a transfer of the case from the Sessions Court to the High Court on the ground that the case was of public importance and that difficult constitutional points of great importance were expected to be raised during the trial. He said that for these reasons it would be more appropriate for the trial to be held in the High Court rather than in the Sessions Court. The application was strongly opposed by the prosecution and in doing so it filed a lengthy affidavit in reply and exhibited a certificate issued by the Public Prosecutor designating the Sessions Court at Seremban as the trial court in pursuance of section 5(1) of the Sedition Act, 1948. The application was dismissed by the High Court on June 10, 1974 mainly on the ground that the accused had failed to show that he would not have a fair and impartial trial in the Sessions Court (see [1974] 2 M.L.J. 48).

The trial then commenced promptly in the Sessions Court the next day on June 11, 1974 but its progress thereafter was unduly slow and after six days of hearing spread over a year the President of the Sessions Court was transferred to Kedah as a Deputy Public Prosecutor even as the last prosecution witness was in the box waiting to be cross-examined after having completed his evidence-in-chief. The prosecution was quite happy to have the former President complete the hearing but not so the accused. On June 19, 1975 he applied to the High Court that the former President be precluded from hearing the part-heard case any further and that a re-trial before another President be ordered. On June 25, 1975 the High Court ruled that in the circumstances of the case the President had ceased to exercise any jurisdiction in the trial of the accused and ordered that the case be heard *de novo* by the succeeding President of the Sessions Court (see [1976] 1 M.L.J. 143).

Now the prosecution shifted its stand. It had earlier strongly opposed any change in venue but now on April 15, 1976 and without much ado the prosecution had the case transferred to the High Court by the simple albeit legitimate expedience of getting a certificate dated March 3, 1976 from the Attorney-General in his capacity as the Public Prosecutor under section 418A of the Criminal Procedure Code. The accused who had from the very beginning sought a High Court trial objected to this transfer when the case turned up in the High Court. The prosecution and the defence were really taking quite some time to make up their minds as to exactly where the accused should be tried for the offence he had committed on the night of June 23, 1972. Anyway the defence objection was disallowed and the case was eventually heard in the High Court.

The accused is fined $2,000 in default six months' imprisonment.

Order accordingly.

Solicitors: *Yeap & Co.*